

KRIEG · DEVAULT
ATTORNEYS AT LAW

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Mr. Greg Strack
Assistant Director, General Government
Indiana State Budget Agency
212 State House
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Re: Retirement Medical Benefits Account Plan
Interpreting Last Day of Service to Mean Last Day of Employment

Dear Greg:

You have asked me to offer an opinion concerning the definition of a “retired participant” in IC 5-10-8.5-9 and Section 2.4 of the Retirement Medical Benefits Account Plan (the “Plan”). Those sections define a retired participant, in part, as a “participant who is eligible for and has applied to receive a normal, unreduced or disability retirement benefit ... on the participant’s last day of service.” [Emphasis added.] It is my understanding that it is not uncommon for retiring state employees to use their accumulated vacation leave immediately prior to their retirement. Additionally, under some, if not all, of the Indiana public employee retirement funds, a disabled participant remains in the employ of his or her employer until the earlier of death or the date he or she is eligible to apply for a normal, unreduced retirement benefit from the fund in which he or she participates. Thus, the participant’s last day of active service may be earlier than the date on which the participant terminates employment with his or her employer.

Generally, under most employee benefit plans, an employees’ last day of service with the employer maintaining the plan is the date on which the individual has a “separation from employment.” For example, a participant is restricted from receiving a distribution from a 401(k), 403(b) or 457(b) plan until the participant is disabled, dies, experiences a hardship or unforeseen emergency, attains age 59½ or incurs a separation from employment. A participant incurs a separation from employment when the employee ceases to be an employee of the employer maintaining the plan. An employee does not have a severance from employment if, in connection with a change of employment, the employee’s new employer maintains the plan with respect to the employee.

Because the usual meaning associated with a last day of service requirement is that the employee has a separation from employment, I believe it would be a reasonable interpretation of the statute and the Plan to treat the date the participant incurs a separation from employment as

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the participant's last day of service for purposes of the Plan, regardless of whether the participant is actively performing services on that date.

I hope this is responsive to your question but please let me know if you need additional clarification.

Sincerely,

Deborah C. McNear